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Before the
Federal Communications Commission
Washington, D.C. 20554

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FEB 22 2001

In the Matter of)
)
Amendment of Section 73.202(b),)
Table of Allotments,)
FM Broadcasting Stations.)
(Macon, Mississippi))

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

MM Docket No. 01-38 /
RM-10064

To: Chief, Allocations Branch

COMMENTS OF RADIO SOUTH, INC.

Radio South, Inc. ("Radio South"), licensee of Station WLXY(FM), Northport, Alabama, by its attorney, hereby submits Comments in support of the Notice of Proposed Rule Making adopted in this proceeding on February 7, 2001 (DA 01-348, released February 9, 2001) (the "Notice") which proposes to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, by deleting the allotment of Channel 263A at Macon, Mississippi. As we shall demonstrate, the history of Channel 263A in Macon demonstrates a pervasive lack of meaningful interest in developing an FM broadcast station in that community. Deletion of the allotment will further the Commission's mandate, set forth in Section 307(b) of the Communications Act, favoring the efficient use of spectrum and will permit the Mass Media

Bureau to complete the processing of Radio South's pending application for a minor change in facilities that will authorize Station WLXY to upgrade to a Class C1 allotment..^{1/}

Background: The History of a Frequency Lain Fallow

From the inception of the Channel 263A Macon allotment almost 15 years ago, the frequency has lain fallow – unused without interruption – notwithstanding ostensible expressions of interest by three parties.

As an initial matter, the Channel 263A allotment at Macon, Mississippi was not part of the Commission's original allotment scheme. Rather, the channel was first allotted to Macon in 1986 at the request of Double 'H' Broadcasting Company.^{2/} Significantly, although an application for Channel 263A was subsequently granted on March 2, 1987, the construction permit issued to WMXG, Inc. (File No. BPH-890531JJ) remained unbuilt. Ultimately, the construction permit for Station WMXG(FM) was forfeited and canceled by letter on June 23, 1992. Underscoring its lack of interest in the facility, WMXG, Inc., did not even seek reconsideration of the cancellation.^{3/}

Shortly thereafter, Radio South's predecessor-in-interest as licensee of WLXY(FM) – Warrior Broadcasting, Inc. – submitted a Petition for Rule Making that requested the substitution of Channel 264C3 for Channel 264A at Northport and the modification of its license accordingly

^{1/} On October 12, 1999, Radio South filed a minor change application to relocate and make other changes in the facilities for the Station. (File No. BPH-19991012AAG).

^{2/} *In the Matter of Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Macon, Mississippi)*, Report and Order in MM Docket No. 85-263 RM-4957, 1986 FCC LEXIS 3188 (MMB, Allocations Branch, 1986), 51 Fed. Reg. 23763 (July 1, 1986).

^{3/} Accordingly, the Commission's action became final on July 23, 1992.

to specify operation on the higher powered channel. In order to accommodate the proposal in conformity with minimum distance separation requirements, Warrior requested the deletion of vacant Channel 263A at Macon or alternatively, the placement of a site restriction on the Macon allotment.^{4/} In that Notice, the Allocations Branch stated that, “We will delete the Macon channel if no expression of interest in retaining the channel is filed.”^{5/} In the subsequent Report and Order in that proceeding released on March 25, 1993,^{6/} the Allocations Branch observed that no expressions of interest advocating retention of Channel 263A at Macon, Mississippi, were received in response to the Notice and accordingly, it deleted the allotment.^{7/}

Following the deletion of Channel 263A, the Macon market remained dormant for over four years. In 1997, however, a Petition for Rule Making was filed by Team Broadcasting Company, Inc. requesting the allotment of Channel 244A to Macon, in response to which, the Allocations Branch issued yet another Notice of Proposed Rule Making.^{8/} Subsequent to the issuance of the Notice, but prior to the adoption of the Report and Order in that proceeding,

^{4/} *In the Matter of Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Northport, Alabama and Macon, Mississippi)*, Notice of Proposed Rule Making in MM Docket No. 92-225, RM-8073, 7 FCC Rcd. 6376 (MMB, Allocations Branch, 1992).

^{5/} *Id.* at 6376.

^{6/} *In the Matter of Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Northport, Alabama and Macon, Mississippi)*, Report and Order in MM Docket No. 92-225, RM-8073, 8 FCC Rcd. 2161 (MMB, Allocations Branch, 1993).

^{7/} As a consequence of the deletion of Channel 263A at Macon, the Commission was able to allot Channel 264C3 to Northport, Alabama, for use by Station WLXY(FM).

^{8/} *In the Matter of Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Macon, Mississippi)*, Notice of Proposed Rule Making in MM Docket No. 97-188, RM-9137, 12 FCC Rcd. 23 (MMB, Allocations Branch, 1997).

Team Broadcasting, Inc., the proponent, filed a “Request to Dismiss Petition for Rulemaking,” in which it withdrew its earlier expression of interest in the proposed Macon allotment. However, in addition to Team Broadcasting’s filing, Metro Radio, Inc., on October 17, 1997, had also submitted comments supporting the proposed allotment and another party, Colon Johnston, proffered a counterproposal that requested the allotment of Channel 244C2 at Walnut Grove, Mississippi.

In a Report and Order released on May 1, 1998,^{2/} the Allocations Branch at the outset acknowledged the existence of a short-spacing problem that prevented the allotment of the requested channel (Channel 244A).^{10/} However, taking note of “the interest expressed by Metro Radio,” the Branch decided to it would allot an FM channel to Macon and, in lieu of Channel 244A, it once again allotted Channel 263A – the very same channel that had been deleted more than five years earlier because of its short-spacing conflict with WLXY(FM)’s Channel 264C3 at Northport, Alabama.^{11/} In making this allotment, the Report and Order also rejected Colon Johnston’s counterproposal. Johnston filed a timely Petition for Reconsideration of the above-

^{2/} *In the Matter of Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Macon, Mississippi)*, Report and Order in MM Docket No. 97-188, RM-9137, DA 98-812, 13 FCC Rcd. 11061 (MMB, Allocations Branch, 1998).

^{10/} *Id.* at 11061. Specifically, Channel 244A would have been short-spaced with a pending one-step upgrade application filed by Station WKXK(FM) for Channel 244C2 at Pine Hill, Alabama (File No. BPH-970625IC).

^{11/} *Id.* Although the Allocations Branch applied a site restriction to the new allotment of Channel 263A that addressed the short-spacing conflict with WLXY’s existing facilities, that site restriction was not sufficient to permit the upgrade of facilities proposed in WLXY’s pending minor change application.

noted Report and Order asking the Policy and Rules Division to reverse the Allocations Branch's decision to reject the Walnut Grove counterproposal.

Subsequently, during the pendency of Johnston's petition, on September 30, 1999, Metro Radio filed a pleading, captioned "Withdrawal of Expression of Interest and Petition for Deletion of Allotment," in which it withdrew its expression of interest and observed that "since the original proponent [Team Broadcasting] also has withdrawn its expression of interest in the allotment, it is clear that there is no party with any ongoing interest in the Macon allotment."^{12/} Metro Radio also requested that the Commission delete the allotment of Channel 263A at Macon.^{13/}

In Comments filed on October 10, 2000, Radio South referred to the Withdrawal of Expression of Interest and Petition for Deletion of Allotment filed by Metro Radio. Radio South supported the deletion of this allotment from the FM Table of Allotments and removal from the FM Broadcast Auction Public Notice released on September 25, 2000. Radio South also pointed out that this deletion of the Channel 263A allotment at Macon would remove a conflict with its one-step application to upgrade Station WLXY to specify operation on Channel 263C1 (File No. BPH-19991012AAG).

In a Memorandum Opinion and Order released on January 26, 2001 (DA01-185), the Chief of the Allocations Branch allotted Channel 244C2 to Walnut Grove but decided not to delete the Channel 263A allotment at Macon, or otherwise set aside the Branch's action allotting

^{12/} Withdrawal of Expression of Interest, and Petition for Deletion of Allotment filed September 30, 1999, by Metro Radio, Inc., in MM Docket No. 97-188, RM-9137, at 2.

^{13/} *Id.*

this channel on the basis of the Metro Radio pleading which it noted was filed 16 months after the release of the Report and Order. The Memorandum Opinion and Order states that the appropriate procedure would be for either Radio South or Metro Radio to file a petition for rule making requesting deletion of this allotment and setting forth the public interest reasons for the deletion. Such an approach affords interested parties the opportunity to comment on the proposed deletion.

The Public Interest Benefits of Deletion of the Macon Allotment

First and foremost, maintenance of the allotment will not foster the fundamental and longstanding policy, set forth in Section 307(b) of the Communications Act, favoring the efficient use of the radio spectrum. Section 307(b) charges the Commission, in making allocations of radio facilities, to “make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same.” As the history of Channel 263A in Macon demonstrates, preserving the allotment would manifestly undermine this important policy goal. It certainly would not be “efficient” from a spectrum usage standpoint to maintain an allotment that has never been, and clearly will never be, used for its intended purpose.

The inefficiency is aggravated by the unfair and inequitable impact that the allotment has on the nearby community of Northport. Radio South’s Station WLXY is Northport’s only local aural service. Because the errant allotment in Macon creates a short-spacing problem for WLXY’s pending upgrade to Class C1 status, preservation of the allotment in the interest of an illusory first local service in Macon comes at the expense of a bona fide improvement in an

operating first local service for the residents of Northport. Such a result plainly contravenes the public interest.

The Availability of an Alternate Channel at Macon

As noted above, in 1993, the Allocations Branch previously deleted an allotment of Channel 263A from Macon because of the demonstrated lack of interest in developing the channel in that community and because of the need to accommodate Station WLXY's ability to upgrade its service to the citizens of Northport. Such action should be taken once again.

However, in the event that there is an expression of interest filed in response to Notice, Radio South requests the substitution of Channel 249A for Channel 263A at Macon.

The Notice points out that "[a] staff engineering review has determined that the proposed Channel 249A alternate allotment complies with the minimum separation requirements set forth in Section 73.207(b) of the Commission's Rules." As shown in the attached Technical Statement of Jefferson G. Brock, Radio South's consulting engineer, Channel 249A can be allotted to Macon at geographic coordinates North Latitude 33° 05' 40" and West Longitude 88° 31' 40". This location has a site restriction of 4.4 kilometers southeast of the community to avoid shortspacing Station WWMS, Channel 248C1, Oxford, Mississippi. As demonstrated in the Technical Statement, Channel 249A at the proposed allocation reference site meets the Commission's minimum distance separation requirements to all licensed, applied for or proposed facilities. Moreover, a maximum Class A facility, operating from the reference site, will deliver a 3.16 mV/m contour over Macon. From the proposed reference site, a maximum Class A station would provide 60 dBu service to 16,016 persons in 2,498.3 square kilometers.

WHEREFORE, for the foregoing reasons, Radio South, Inc. respectfully requests that the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, be amended by deleting the allotment of Channel 263A at Macon, Mississippi, or in the alternative, if an expression of interest is filed in response to the Notice, substituting Channel 249A for Channel 263A at Macon. Such action is consistent with the determination contained in the Notice that "the public interest would be served by proposing the deletion or substitution of the Channel 263A allotment at Macon, Mississippi, because it would permit Station WLXY to upgrade to a Class C1 allotment."

Respectfully submitted,

RADIO SOUTH, INC.

By 
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Its Attorney

February 22, 2001

GRAHAM BROCK, INC.

BROADCAST TECHNICAL CONSULTANTS

TECHNICAL STATEMENT
RADIO SOUTH, INC.
ALLOT CHANNEL 249A
MACON, MISSISSIPPI

TECHNICAL EXHIBIT

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TECHNICAL STATEMENT
RADIO SOUTH, INC.
ALLOT CHANNEL 249A
MACON, MISSISSIPPI

TECHNICAL STATEMENT

1. This Technical Statement and attachments were prepared on behalf of Radio South, Inc. ("RSI"). RSI has requested the deletion of Channel 263A at Macon, Mississippi. As an option to the deletion of the channel, RSI has undertaken a review to determine the availability of an alternate channel that could be used at Macon, Mississippi.

2. Channel 249A can be allotted to Macon, Mississippi, at geographic coordinates North Latitude 33° 05' 40" and West Longitude 88° 31' 40". This location has a site restriction of 4.4 kilometers southeast of the community to avoid shortspacing station WWMS, Channel 248C1, Oxford, Mississippi. As detailed on Exhibit #1, Channel 249A at the proposed allocation reference site meets the Commission's minimum distance separation requirements to all licensed, applied for or proposed facilities. Exhibit #2 demonstrates that a maximum Class A facility, operating from the reference site, will deliver a 3.16 mV/m contour over Macon. From the proposed reference site, a maximum Class A station would provide 60 dBu service to 16,016 persons in 2,498.3 square kilometers.

3. Therefore, RSI proposes the following amendment to §73.202 of the rules:

Macon, Mississippi

Present
263A

Proposed
249A

4. The foregoing Technical Statement was prepared on behalf of Woodruff County Broadcasting by Graham Brock, Inc., its Technical Consultant. All FM data was extracted from the CDBS database. All population data was extracted from the PL 94-171 files. We assume no liability for errors or omissions in those databases which may be adverse to the proposal contained herein.

**TECHNICAL STATEMENT
RADIO SOUTH, INC.
ALLOT CHANNEL 249A
MACON, MISSISSIPPI**

EXHIBIT #1

ALLOCATION STUDY FOR MACON, MISSISSIPPI
USING PROPOSED ALLOCATION SITE AS REFERENCE

REFERENCE		DISPLAY DATES
33 05 40 N	CLASS A	DATA 01-26-01
88 31 40 W	Current rules spacings	SEARCH 01-31-01
----- CHANNEL 249 - 97.7 MHz -----		

CALL TYPE	CH# LAT	CITY LNG	STATE PWR	BEAR' HT	D-KM D-Mi	R-KM R-Mi	MARGIN (KM)
RADD	249A	Macon	MS	0.0	0.00	115.0	-115.00
ADD	32 21 57	88 54 50	0.000 kW	0M	0.0	71.5	
Radio South, Inc.							
* WMSO	250C3	Newton	MS	204.1	88.54	89.0	-0.46
LIC C	32 21 57	88 54 50	8.700 kW	168M	55.0	55.3	
Apex Broadcasting, Inc.				BLH-19990921ABI			
* WWMS	248C1	Oxford	MS	334.2	132.59	133.0	-0.41
LIC CN	34 10 05	89 09 23	100.000 kW	299M	82.4	82.7	
San-dow Broadcasting, Inc.				BLH-19850712KC			
* WTXT	251C1	Fayette	AL	70.0	74.59	75.0	-0.41
LIC CN	33 19 17	87 46 29	100.000 kW	276M	46.4	46.6	
Capstar Tx Limited Partnership				BLH-19900119KA			
WAYI.C	249A	Thomaston	AL	137.1	123.13	115.0	8.13
CP CX	32 16 49	87 38 06	0.500 kW	14M	76.5	71.5	
Marengo Broadcast Associates				BMPH-20001205ADF			
WOKK	246C1	Meridian	MS	190.0	86.64	75.0	11.64
LIC CN	32 19 30	88 41 17	100.000 kW	183M	53.8	46.6	
New South Communications, Inc.				BLH-19940207KC			
WRJH	249A	Brandon	MS	232.4	166.84	115.0	51.84
LIC CN	32 10 19	89 55 56	6.000 kW	88M	103.7	71.5	
Extreme Communications, Inc.				BMLH-19960520KF			
WEZZFM	249A	Clanton	AL	99.0	175.10	115.0	60.10
LIC HN	32 50 08	86 40 49	3.000 kW	75M	108.8	71.5	
Southeastern Broadcasting Co.				BLH-3338			
WSSIFM	252C3	Carthage	MS	246.9	103.67	42.0	61.67
LIC CN	32 43 29	89 32 44	20.000 kW	100M	64.4	26.1	
Michael D. And Linda D. Goodwin				BLH-19990614KC			
WKGL	249A	Russellville	AL	24.9	184.07	115.0	69.07
LIC CN	34 35 44	87 40 47	3.500 kW	131M	114.4	71.5	
Cumulus Licensing Corp.				BLH-19920127KA			

* Note : This shortage is less than 0.49 km and rounds to zero.

Graham Brock, Inc. - Broadcast Technical Consultants

Macon Proposed

Latitude: 33-05-40 N
Longitude: 088-31-40 W
Power: 6.00 kW
Channel: 249A
Frequency: 97.7 MHz
AMSL Height: 162.92 m
Elevation: 54.2 m
Horiz. Pattern: Omni
Vert. Pattern: No
Prop Model: None
60 dBu area : 2,498.3 sq. km.
60 dBu pop. : 16,016 persons

60 dBu SERVICE RADIUS

70 dBu SERVICE RADIUS

33-15-00 N
089-00-00 W

088-45-00 W

088-30-00 W

088

Brooksville

Macon

Macon

Aliceville

Winston

33-00-00 N

**EXHIBIT #2
ALTERNATE FM CHANNEL
RADIO SOUTH, INC.
ALLOT CHANNEL 249A
MACON, MISSISSIPPI
January 2001**

Scale 1:400,000

0 5 10 15 km

AFFIDAVIT AND QUALIFICATIONS OF CONSULTANT

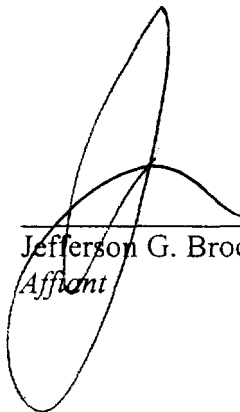
State of Georgia)
St. Simons Island) ss:
County of Glynn)

JEFFERSON G. BROCK, being duly sworn, deposes and says that he is an officer of Graham Brock, Inc. Graham Brock has been engaged by Radio South, Inc., to prepare the attached Technical Exhibit.

His qualifications are a matter of record before the Federal Communications Commission. He has been active in Broadcast Engineering since 1979.


The attached report was either prepared by him or under his direction and all material and exhibits attached hereto are believed to be true and correct.

This the 31st day of January, 2001.



Jefferson G. Brock
Affiant

*Sworn to and subscribed before me
this the 31st day of January, 2001.*



Notary Public, State of Georgia
My Commission Expires: April 20, 2002

CERTIFICATE OF SERVICE

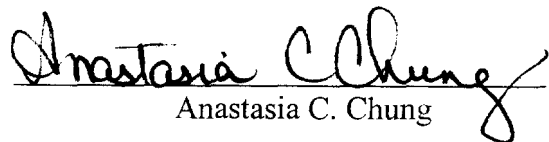
This is to certify that I, Anastasia C. Chung, have filed the foregoing Comments of Radio South, Inc. with the Federal Communications Commission on this 22nd day of February, 2001, and that a copy has been served by way of U.S. mail, postage pre-paid, upon:

Roy Stewart, Chief
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